IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SALES TAX REFERENCE No. 8 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **Yes**

2 To be referred to the Reporter or not ? **Yes**

3 Whether their Lordships wish to see the fair copy of the judgment ? **No**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **No**

5 Whether it is to be circulated to the civil judge ? **No**

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M/S. STEELAGE INDUSTRIES - Applicant(s)
Versus
THE STATE OF GUJARAT - Respondent(s)

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Appearance :
MR TANVISH U BHATT for Applicant(s)
MR SUNIT S SHAH, GP, WITH MS KRINA P.CALLA, AGP for Respondent(s)

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 13/06/2007

ORAL JUDGMENT (Per: HON'BLE SMT.JUSTICE ABHILASHA KUMARI)

1. The Gujarat Sales Tax Tribunal at Ahmedabad, has referred the following question for the opinion of this Court under Section 69 of the Gujarat Sales Tax Act, 1969, ("the Act" for short), which has arisen out of its decision in Appeal No.33 of 1991 decided by the Tribunal on May 14, 1993:

> *"Whether on the facts and circumstances of the case, the Gujarat Sales Tax Tribunal is right in holding that safe deposit lockers are not articles of furniture as referred to in Entry 67 of Schedule II-A of the Gujarat Sales Tax Act, 1969, and therefore not entitled to concessional rate of tax under Entry 212 of Government Notification under Section 49(2) of the Act or whether it falls under Entry 13 of Schedule III?"*

2. The assessee is carrying on the business of manufacturing steel furniture, including fire and burglar resistant safe and safe deposit lockers. The assessee is registered as a dealer under the Act. It made an application on June 24, 1991 under Section

62 of the Act, for determination of the rate of tax payable on the sales of (i) fire and burglar resistant safe, sold under Invoice No.33/31/0033 dated August 9, 1990, and (ii) safe deposit lockers sold under Invoice No.33/31/0031 dated August 8, 1990. In respect of two products manufactured by the assessee, appropriate literature and pamphlets were produced and it was contended that these products, i.e. fire and burglar resistant safe and safe deposit lockers should be held to be covered by Entry 67 of Schedule II-A of the Act and taxed at the concessional rate of tax under Entry 212 of the Government Notification (as it stood at the relevant point of time) issued under Section 49(2) of the Act. This contention of the assessee was negatived by the Deputy Commissioner on the ground that it was already decided in the case of Godrej and Boyce Manufacturing Company on March 13, 1991, that such products cannot be regarded as furniture. Accordingly, an order was

passed by the Deputy Commissioner under Section 62 of the Act holding that fire and burglar resistant safe and safe deposit lockers were covered by Entry 13 of Schedule III to the Act and were liable to be taxed accordingly.

3. Being aggrieved by the order of the Deputy Commissioner, the assessee preferred an Appeal before the Tribunal which was registered as Appeal No.33 of 1991. After considering the provisions of Entry 67 of Schedule II-A, Entry 73 of Schedule II-A and various judgments cited by the parties, it was held by the Tribunal that as far as fire resistant filing cabinet, fire resistant record cabinet and fire and burglar resistant safe are concerned, they are articles of convenience or decoration used in the offices or public buildings or in industrial estates or banks. Therefore, it was concluded that the said articles are articles of furniture, and are exigible to

concessional rate of tax under Entry 212 (as it then stood) of Notification issued under Section 49(2) of the Act. However, as far as safe deposit lockers are concerned, the Tribunal took the view that the said products cannot be considered to be furniture and are therefore covered by the residuary Entry 13 of Schedule III of the Act (as it stood at the relevant point of time).

4. Feeling aggrieved by the decision of the Tribunal in not considering the safe deposit lockers as 'furniture', the assessee moved an application to refer question of law mentioned therein for the opinion of this Court. The said application is accepted by the Tribunal and as a consequence thereof, the question of law mentioned earlier has been referred to this Court for opinion.

5. This Court has heard Mr.Tanvish U.Bhatt, learned counsel for the applicant and Ms.Krina P.Calla, learned Assistant

Government Pleader for the opponent, at length and in great detail. This Court has also considered the paper-book, which contains the record of the case, including the material in the form of brochure or pamphlet submitted by the assessee before the Tribunal, regarding the product manufactured by it.

6. In order to effectively adjudicate and come to a conclusion regarding the question referred for the opinion of this Court, it is necessary to examine Entry 67 of Schedule II-A, of the Act. The same reads as under:

> *"furniture of all kinds, upholstered furniture and skeletons of any of them."*

A perusal of this Entry makes it amply clear that what it refers to is furniture of all kinds, whether upholstered or not, and the skeletons of any kind of furniture, which can be understood to be a kind of outer frame, whether upholstered or otherwise.

This Entry does not include the words “lockers” or “safe deposit lockers”. In order to ascertain whether “safe deposit lockers” can be considered to be articles of `furniture', it will be necessary to understand the meaning of the word `furniture'.

7. According to the Concise Oxford Dictionary, Tenth Edition, `**furniture'** means, “(1) the movable articles that are used to make a room or building suitable for living or working in, such as tables, chairs, or desks. (2) the small accessories or fittings that are required for a particular task or function”. In the very same edition, at page 1259, **“safe deposit”** has been defined to mean, “a strongroom or safe within a bank or hotel”. From the above mentioned dictionary meaning of `furniture' it is evident that movable articles which are used to make a room or a building suitable for living or working purposes such as chairs, tables,

desks, etc. and other articles which may be used in day-to-day living and working can be said to fall under the definition of `furniture'. `Furniture' can also be said to mean all the other accessories and fittings that are required in rooms or buildings in residential or working premises, which are required for particular tasks or functions, useful in a dwelling or working place. In juxtaposition to this, the dictionary meaning of “safe deposit” indicates that it is in the nature of a strongroom or a safe kept in any premises such as banks or hotels. The necessary implication and corollary of this meaning is that “safe deposits” are given or rented out by the authorized authorities of such banks or hotels, to their customers who may desire to make use of them for the safe-keeping of their valuable articles, for a specified rental.

8. If Entry 67, Schedule II-A of the Act is

read in the light of the dictionary meaning of `furniture' as quoted hereinabove, it will be evident that it refers to furniture, i.e. movable articles that are used to make a room or building suitable for living or working, such as tables, chairs, desks, etc., which may or may not be upholstered and skeletons (outer frames) of any of the abovereferred to furniture items. As far as the dictionary meaning of `furniture' is concerned, it can be said to include all articles of convenience or decoration used for the purpose of furnishing the dwelling, place of business or office. In the light of the dictionary meaning of the word `furniture', it is evident that “safe deposit locker” cannot be considered to be an article of `furniture'.

9. At this stage, it would be relevant to refer to the brochure or pamphlet produced by the assessee before the Tribunal describing the different articles manufactured by it. It

includes various types of safe deposit lockers with different specifications and special security features, designed to safeguard valuable objects. A perusal of this literature makes it clear that the safe deposit lockers manufactured by it are designed to meet certain special requirements for special purposes. The manner of construction of the safe deposit lockers and the locking device used in them is of a specialized kind having special security features, thereby differentiating it from ordinary articles of furniture. So far as furniture is concerned, it is used in a dwelling place or an apartment for the sake of decoration, utility or convenience and in an office or an industrial organization for the purpose of keeping files, papers, etc. Thus, furniture is an article of convenience which may also be decorative, that is used for furnishing a place of residence, business or an office. By no stretch of imagination can a safe

deposit locker be said to fall within the ambit of the word `furniture' as described in the dictionary and elaborated hereinabove.

10. So far as “safe deposit lockers” are concerned, they are not articles of convenience or decoration as they are specially designed and fabricated for banks and institutions which are doing the business of giving safe deposit lockers on hire to their customers. As such, they have been manufactured to perform special functions. Safe deposit lockers are not stocked or sold as ordinary articles of furniture. In common parlance, as an ordinary lay person would understand, articles of furniture are those articles which are used for utility, decoration or convenience in homes and offices, and safe deposit lockers are not commonly understood to be articles of furniture. The banks or institutions which purchase “safe deposit

lockers” and hire them out for a rental to their customers, are using the same as tools or implements to enhance their business. Such institutions which offer safe deposit lockers for hire can be said to be expanding their business by renting out “safe deposit lockers” to their customers as an additional facility. As such, it cannot be said that banks or institutions purchasing safe deposit lockers are doing so for their convenience. Even in ordinary parlance, “safe deposit lockers” are understood by a lay person to be those lockers which are hired out by banks or other institutions to their customers for the safe keeping of their valuables, at a prescribed rental. Further, it is relevant to note that “safe deposit locker” even though made of iron and/or steel, is different and distinct from an Almirah and other iron and/or steel furniture or upholstered furniture.

11. Mr.Tanvish U.Bhatt, learned counsel for the

applicant, contended that the term `furniture' along with its other uses and interpretations with regard to decoration also, has an important usage of storage of articles or things and therefore should be regarded as `furniture'. According to him, the intention behind hiring of a locker or a safe deposit locker is also to store valuable articles or things and those safe deposit lockers are hired with the Banks with an intention of getting added safety which may not be available at any one's residence and therefore, it would not be correct to draw a distinction that `furniture' and “safe deposit locker” are two different articles for the reason that both have the same purpose, i.e. storage of articles or things. It was pleaded that smaller safe deposit lockers are also available which are used in homes for storing valuables that can be kept in wardrobes or almirahs and it is not necessary that “safe deposit lockers” are

only to be found in Banks.

Ms.Krina P.Calla, learned Assistant Government Pleader, replying to the submissions made by Mr.Tanvish U.Bhatt, learned counsel for the applicant, submitted that the purpose of storage for which a “safe deposit locker” can be used is not the only aspect that has to be seen. It was argued that it cannot be overlooked that the main purpose of the “safe deposit locker” is to provide security for the valuable articles that may be stored in it and for the purpose of providing security, a safe deposit locker has certain special fabrication and specifications which differentiate it from an ordinary piece of furniture that may also be used for storage. Therefore, according to the learned Assistant Government Pleader, “safe deposit locker” cannot be regarded as `furniture', whether used in a home or an institution such as a Bank.

Although the contention raised by Mr.Tanvish U.Bhatt is attractive at first blush, the same cannot be accepted because, usage of an article is not the only test for the purpose of determining whether a particular item would fall within a particular Entry. Over and above the test of usage, the Court has to consider other factors that can effectively illustrate the meaning of the article concerned, so as to determine whether it would fall under a particular Entry. The important tests to this end are the dictionary meaning, common parlance test and the manner in which the article is understood in business circles and amongst persons dealing in it. Once those tests are applied, there is no manner of doubt that safe deposit lockers cannot be regarded as `furniture'.

Examining the point raised by the learned counsel for the applicant from another angle, all articles of furniture cannot be

used for storage purposes, but the only use that a safe deposit locker can be put to is for storage of valuables with additional security. Because of their special fabrication, safe deposit lockers are items distinct from ordinary articles of furniture. If the submission advanced on the basis of usage is accepted, the glaring distinction between `furniture' and “safe deposit lockers” would disappear. Whether used in Banks, institutions or in homes, “safe deposit lockers” cannot be regarded as a synonym for `furniture' as, to do so would result in stretching it too far in an artificial manner, contrary to the dictionary meaning, common parlance test and the intention of the Legislature, reflected in the plain words of Entry 67. Therefore, the contention of the learned counsel for the applicant, based on usage, has no force and is rejected.

12. It is well settled that when an Act is

passed with reference to a particular trade, business or transaction and words are used which everybody who is dealing in that trade, business or transaction, or conversant with the same understands to have a particular meaning, then those words are considered as having that particular meaning. Entry 67, as it stands, simply reads, “furniture of all kinds, upholstered furniture and skeletons of any of them”. Nothing precluded the Legislature from including the words “safes of iron and steel” or “safe deposit lockers” in the said Entry. The fact that “safe deposit lockers” have intentionally not been included in the said entry makes the intention of the Legislature amply clear that “safe deposit lockers” should not be regarded as furniture of the kind contemplated by Entry 67. “Locker” in a particular business or profession is never treated as a piece of furniture. It has a different identity and is understood to be an item which is

distinct from furniture. The word `locker' has to be construed in the sense in which it is understood in the trade or business by the dealer and the consumer. Even if `locker' is presumed to be an article of convenience or decoration used for storage of valuables, in that case as well, the test of its commercial identity and not the functional test has to be applied. The special specifications of a “safe deposit locker” have amply been demonstrated by the assessee in the brochure supplied by it to the Tribunal, referred to earlier. Applying the functional test to the words “safe deposit locker”, as understood in commercial parlance by the dealer and the consumer, as also common parlance test, it is abundantly clear that “safe deposit locker” cannot be included or referred to as an item of furniture in the market by those who deal with it, be it for the purpose of selling, purchasing or any other usage.

13. The learned Assistant Government Pleader has brought to our notice, a decision of the Division Bench of this Court in Sales Tax Reference No.7 of 1999 - M/s.Chandan Metal Products Pvt. Ltd. v. The State of Gujarat, decided on October 11, 2006, wherein, identical question which was referred to the Court has been answered in the affirmative, i.e. against the assessee and in favour of the Revenue.

14. In view of the above discussion, this Court is of the opinion that the view taken by the Tribunal, that “safe deposit locker” would not be covered by Entry 67 in Schedule II-A, to the Act, is eminently just. The Tribunal has rightly come to the conclusion that “safe deposit lockers” are covered under Entry 13 of Schedule III to the Act. Therefore, the question referred for the opinion of this Court is answered in the affirmative, i.e. against the assessee and in favour of the Revenue.

15. The Reference, accordingly, stands disposed of. There shall be no orders as to costs.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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